

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

W. HOLDING COMPANY, INC., et al.
Plaintiffs

v.

CHARTIS INSURANCE COMPANY OF PUERTO RICO,
Defendant

**FEDERAL DEPOSIT INSURANCE CORPORATION, AS
RECEIVER OF WESTERNBANK PUERTO RICO,**
Plaintiff Intervenor

v.

FRANK STIPES GARCIA, et al.,
Cross-Claim Defendants

CHARTIS INSURANCE COMPANY OF PUERTO RICO,
Previously Joined Defendant

**MARLENE CRUZ CABALLERO, AND THE FRONTERA-
CRUZ CONJUGAL PARTNERSHIP, et al.,**
Additional Defendants.

**CIVIL ACTION NO.
11-02271 (GAG)**

**JURY TRIAL
DEMANDED**

**MOTION FOR LEAVE TO FILE SUR-SURREPLY BRIEF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

The Federal Deposit Insurance Corporation, in its corporate capacity (FDIC-C), respectfully requests leave to file a sur-surreply brief, not to exceed 8 pages, in support of its Motion for Summary Judgment. As the Court has expressed a desire to resolve this issue as expeditiously as possible, FDIC-C has prepared its brief promptly and has attached it to this motion.

The D&Os' surreply brief is 12 pages long, notwithstanding their statement that they would file a brief not exceeding 10 pages, and raises several arguments for the first time. In particular, the D&Os are now claiming that they can sue FDIC-C to enforce a duty to depositors,

a mistaken notion that FDIC-C corrects in the attached brief. The D&Os also now assert that the theory that they announced for the first time on April 22, 2014, *see* Docket No. 966, is not in fact for setoff, but rather is based on other, ill-defined theories; FDIC-C briefly addresses those theories. Finally, the D&Os claim that *FDIC v. Meyer*, 510 U.S. 471 (1994), and various cases addressing claims for declaratory relief render their claims not cognizable under the Federal Tort Claims, but the D&Os are misreading those cases.

For these reasons, to fully inform the Court and enable an efficient resolution of these issues, FDIC-C respectfully requests leave to file a sur-surreply brief in support of its Motion for Summary Judgment, not to exceed 8 pages (exclusive of title page, tables of contents and authorities, signature block, and certificate of service).

Date: May 20, 2014

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CERTIFICATE OF SERVICE

I hereby certify pursuant to L. Cv. R. 5.1 (b) (2) that I filed this document electronically

with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to all parties through their counsel of record in the captioned case.

In San Juan, Puerto Rico, this 20th day of May, 2014.

/s/ Duncan N. Stevens